

10 December 1996

Re: NEPA Call-In Technical Inquiry 0008 - Disposal of Federal Building

Dear NEPA Call-In User:

This letter is in response to your November 19, 1996 request for information on potential environmental liability problems resulting from selling a GSA building located in Texas. The GSA provided NEPA Call-In with copies of the "Limited Environmental Assessment," prepared by LOFLIN Environmental Services, Inc. dated September 10, 1996, and the ERIIS database printout dated September 9, 1996, both performed for the subject property. Specifically you would like a review of these two documents and identify potential environmental liability problems GSA could incur if it disposes of the property.

NEPA Call-In evaluated the potential environmental liabilities to the GSA as the owner of the subject property and the possible changes to those liabilities resulting from selling the property. Our analysis is entirely based on the site information included in the two documents mentioned above. It is important to note that, due to the broad scope of liability for past environmental actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the potential for increased liabilities as a result of a real estate transaction is much greater for the purchaser than for the seller. CERCLA liability is defined in Title 40 Code of Federal Regulations (CFR) Part 107.

A. Asbestos Containing Building Materials (ACBMs)

Based on the results of the asbestos survey performed in November 1994 by LOFLIN and reported in the Limited Environmental Assessment, the subject building contains ACBMs. According to the LOFLIN report, ACBMs were found in various materials throughout the building, however, most ACBMs were judged to be non-friable and in good condition. According to 40 CFR 763.83, friable is defined as material, when dry, which may be crumbled pulverized, or reduced to powder by hand pressure. Only the pipe, flue and tank insulation were considered by LOFLIN to be friable materials. The LOFLIN report does not describe the condition of those friable materials.

The full extent of the current GSA liabilities regarding ACBMs may include:

- (1) the cost of removing all friable ACBMs; and
- (2) the costs associated with any court action against the GSA on the grounds of asbestos-related health problems derived from the ACBMs in the building during the GSA's ownership of the property.

If the GSA sells the property in its current condition, a potential increase in liability may come from possible exposure of personnel to airborne asbestos fibers from the friable ACBMs identified by LOFLIN. Specifically, the additional liability may come from the fact that the GSA, as the property owner, has the authority to implement access restrictions and corrective measures if dangerous conditions develop. The GSA would not have that authority when the transaction is completed but could remain a potentially responsible party if asbestos exposure impacts the health of future building occupants.

Reasonable means to minimize an increase in environmental liabilities as a

result of selling of the property due to ACBMs include: (1) perform a limited asbestos removal action focused on the friable and damaged ACBMs and (2) disclose to purchaser all available asbestos survey data and documentation of the liability, these two measures would: (1) protect the health of the future building occupants; (2) increase the attractiveness of the property by decreasing the business risks associated with environmental factors; and (3) show that the GSA is proactive in addressing environmental concerns.

B. Soil and Groundwater Contamination

No documented contamination of soil or groundwater exists at the subject property. However, the property has not been investigated for soil or groundwater contamination, except for one composite soil sample analyzed for arsenic. The analytical result indicated arsenic concentration was lower than 300 parts per million, the detection limit of the method used. Neither the depth of the water table nor the direction of the flow of the uppermost aquifer are described in the two documents made available to NEPA Call-In for review.

Both the Limited Environmental Assessment and the ERIIS database printout indicate that several underground storage tanks (USTs), aboveground storage tanks (ASTs), and several documented leaking underground storage tanks (LUSTs) exist within one half-mile radius around the GSA property. In addition, an auto sales and service shop named J.P. Auto Sales, is located adjacent and to the north of the subject property. According to the LOFLIN report, J.P. Auto Sales appears to be a former gas station.

The maximum extent of the current GSA liabilities regarding soil and groundwater contamination, if present, may include: (1) the cost of soil remediation; and (2) the cost of groundwater remediation or containment. It should be re-emphasized that currently there is no evidence of soil or groundwater contamination at the subject property. The extent of liabilities is not expected to increase as a result of selling the property. In fact, GSA's liabilities may decrease because the future owner of the property would likely become a responsible party with regards to any contamination discovered after the completion of real estate transaction.

Because of the potential for unknown liabilities, the lack of any soil or groundwater the existence of current and former USTs in the vicinity of the property may reduce the attractiveness of the site to potential buyers.

This issue may be addressed by performing a limited subsurface soil and groundwater collected from areas most likely to be impacted by hypothetical or documented releases from the USTs and LUSTs located on the nearby properties. The sample depths should be determined based on the water table depth. If the water table is less than approximately twenty feet below ground surface (bgs), one or two soil samples should be collected at the water table depth. The rest of the soil samples should be collected from the vadose zone (i.e., above the water table). If the water table is deeper than twenty feet bgs, all samples should be collected from the vadose zone. Each soil sample should be analyzed by a qualified chemical laboratory for total petroleum hydrocarbons (TPH) and benzene ethylbenzene, toluene, and xylene (BTEX). A minimum of one groundwater sample should be collected and analyzed for chlorinated solvents as well as BTEX. Depending upon the size of the site and depth to groundwater additional groundwater sampling may be indicated.

In conclusion, in order to better quantify the potential liabilities related to soil contamination and potential for groundwater contamination and minimize GSA's liabilities

as a result of selling the property, GSA may choose to do the following: (1) perform a limited soil and groundwater investigation; and (2) disclose to potential purchasers all available soils and groundwater data, including the Limited Environmental Assessment and the ERIIS database printout.

C. Fluorescent Light Ballast

The use of fluorescent lights with suspected poly chlorinated biphenyl (PCB) ballast presents only limited environmental liabilities. The liabilities consist mainly in the costs of cleaning up a release of PCB-containing light ballast and the costs associated with improper disposal of used lights. These liabilities should be controlled by implementing a plan consisting of: (1) gradual replacement of used fluorescent lights with new non-PCB and non-mercury fluorescent lights; and (2) following specific disposal procedures for the used fluorescent lights with suspected PCB ballast to ensure that the used lights are sent only to approved disposal facilities.

In order to minimize the liabilities associated with the use of fluorescent lights with suspected PCB ballast, the GSA may consider: (1) prepare and implement a light replacement and proper disposal plan as described in the previous paragraph; and (2) provide the potential purchasers with a copy of the plan and a copy of the Limited Environmental Assessment.

D. Other Environmental Concerns

Based on the two documents reviewed by NEPA Call-In, no other obvious environmental liabilities were identified regarding the subject property. As part of the Limited Environmental Assessment, three paint samples were analyzed for lead content. The lead concentration and Urban Development (HUD) guidelines for consideration as lead-based paint. This information is also recommended to be provided to the potential purchasers.

It should be noted that the liability evaluation presented in this letter was entirely provided by others. The NEPA Call-In has not verified the completeness or accuracy of the information. The contents of this letter should not be construed in any way to indicate NEPA Call-In's recommendation to dispose of the subject property and should not be interpreted as legal advice.

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(Original Signed)

NEPA Call-In Researcher